



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2004

Mr. Jeffrey L. Moore  
Brown & Hoffmeister, L.L.P.  
1717 Main Street, Suite 4300  
Dallas, Texas 75201

OR2004-0310

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194386.

The Town of Flower Mound (the "Town"), which you represent, received a request for case number "008537 and connected cases." The requestor also names individuals involved in the cases and limits the information to the dates of August 1999 through the date of the request. You claim that the requested information is excepted from disclosure under sections 552.108, 552.130 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the requestor's comments. *See* Gov't Code § 552.304 (permitting person to submit written comments to attorney general in open records process).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You have submitted several offense reports as responsive to the request. You indicate that the statute of limitations for each offense in these reports has run. *See* Code Crim. Proc. art. 12.02. You state that the Denton County District Attorney's Office reviewed these cases and recommended that the cases be closed. You also state that for offense report number 01-25996, the Town Police Department recommended that the case be suspended. You state that none of the cases resulted in conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to cases that concluded in a result other than conviction or deferred adjudication.

However, the requestor states that he was convicted in Cause No. CR-2000-04814 and acquitted on two charges stemming from the same information. This office cannot resolve disputes of fact and so, must accept the representations of a governmental body. *See* Tex. Att'y Gen.Op. No. DM-98 (1992) at 3; Open Records Decision No. 426 (1985). Furthermore, the fact that the requestor was convicted of the charges in Cause No. CR-2000-04814 and acquitted on two charges stemming from the same information does not invalidate the Town's claim that there was no conviction resulting from the offenses charged in the reports at issue. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. —Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2).<sup>1</sup> We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

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<sup>1</sup>In light of our conclusion under section 552.108, we need not address your section 552.130 and section 552.137 claims.

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 194386

Enc: Submitted documents

c: Mr. William Atkinson  
107 Russell Drive  
Lewisville, Texas 75077  
(w/o enclosures)